

(1) Used in performing work of a policy, decision-making, or managerial nature which is the direct responsibility of agency officials;

(2) Used to bypass or undermine personnel ceilings, pay limitations, or competitive employment procedures;

(3) Contracted for on a preferential basis to former Government employees;

(4) Used under any circumstances specifically to aid in influencing or enacting legislation; or

(5) Used to obtain professional or technical advice which is readily available within the agency or another Federal agency.

(d) *Limitation on payment for advisory and assistance services.* Contractors may not be paid for services to conduct evaluations or analyses of any aspect of a proposal submitted for an initial contract award unless—

(1) Neither covered personnel from the requesting agency, nor from another agency, with adequate training and capabilities to perform the required proposal evaluation, are readily available and a written determination is made in accordance with 37.204;

(2) The contractor is a Federally-Funded Research and Development Center (FFRDC) as authorized in Section 23 of the Office of Federal Procurement Policy (OFPP) Act as amended (41 U.S.C. 419) and the work placed under the FFRDCOs contract meets the criteria of 35.017-3; or

(3) Such functions are otherwise authorized by law.

#### **37.204 Guidelines for determining availability of personnel.**

(a) The head of an agency shall determine, for each evaluation or analysis of proposals, if sufficient personnel with the requisite training and capabilities are available within the agency to perform the evaluation or analysis of proposals submitted for the acquisition.

(b) If, for a specific evaluation or analysis, such personnel are not available within the agency, the head of the agency shall—

(1) Determine which Federal agencies may have personnel with the required training and capabilities; and

(2) Consider the administrative cost and time associated with conducting the search, the dollar value of the pro-

curement, other costs, such as travel costs involved in the use of such personnel, and the needs of the Federal agencies to make management decisions on the best use of available personnel in performing the agency's mission.

(c) If the supporting agency agrees to make the required personnel available, the agencies shall execute an agreement for the detail of the supporting agency's personnel to the requesting agency.

(d) If the requesting agency, after reasonable attempts to obtain personnel with the required training and capabilities, is unable to identify such personnel, the head of the agency may make the determination required by 37.203.

(e) An agency may make a determination regarding the availability of covered personnel for a class of proposals for which evaluation and analysis would require expertise so unique or specialized that it is not reasonable to expect such personnel to be available.

#### **37.205 Contracting officer responsibilities.**

The contracting officer shall ensure that the determination required in accordance with the guidelines at 37.204 has been made prior to issuing a solicitation.

### **Subpart 37.3—Dismantling, Demolition, or Removal of Improvements**

#### **37.300 Scope of subpart.**

This subpart prescribes procedures for contracting for dismantling or demolition of buildings, ground improvements, and other real property structures and for the removal of such structures or portions of them (hereafter referred to as *dismantling, demolition, or removal of improvements*).

#### **37.301 Labor standards.**

Contracts for dismantling, demolition, or removal of improvements are subject to either the Service Contract Act (41 U.S.C. 351-358) or the Davis-Bacon Act (40 U.S.C. 276a-276a-7). If the contract is solely for dismantling,